

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Carlyne Desir

Plaintiff(s)

vs.

MAGISTRATE JUDGE JAMES ORENSTEIN  
CV 18-2630 (ENV)

Florida Capital Bank, N.A., THE BANK OF NEW YORK Mellon FKA The Bank New York, (CWALT 2006-31CB), Bank of America, Bayview Loan Servicing, LLC, Frenkel Lambert Weiss Weisman & Gordon, LLP, STEWART TITLE, JP MORGAN CHASE BANK, N.A, and Mortgage Electronic Registration Systems, Inc. (MERS)

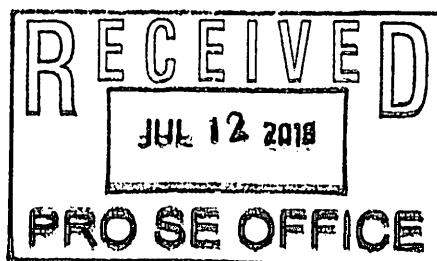
Defendant(s)

**OPPOSITION, OBJECTION AND STRIKE TO NOTICE OF MOTION TO DISMISS THE COMPLAINT;, NOTICE TO PRO SE LITIGANT;, MEMORANDUM OF LAW;, DECLARATION OF MICHAEL E. AUERBACH, ESQ.; AND CERIFACTE OF SERVICE AND ORDER**

Pro se litigants' court submissions are to be construed liberally and held to less stringent standards than submissions of lawyers. If the court can reasonably read the submissions, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with rule requirements. **Boag v. MacDougall**, 454 U.S. 364, 102 S.Ct. 700, 70 L.Ed.2d 551 (1982); **Estelle v. Gamble**, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)(quoting **Conley v. Gibson**, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)); **Haines v. Kerner**, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); **McDowell v. Delaware State Police**, 88 F.3d 188, 189 (3rd Cir. 1996); **United States v. Day**, 969 F.2d 39, 42 (3rd Cir. 1992)(holding pro se petition cannot be held to same standard as pleadings drafted by attorneys); **Then v. I.N.S.**, 58 F.Supp.2d 422, 429 (D.N.J. 1999).

ANY/All documents filed by McCalla Raymer Leibert Pierce, LLC attorneys on the records in this instant case CV 18-2630 and authenticated by attorneys for JP MORGAN CHASE BANK, N.A, are inadmissible.

Supreme Court Rulings "An attorney for the plaintiff cannot admit evidence into the court. He is either an attorney or a witness". (**Trinsey v. Pagliaro** D.C.Pa. 1964, 229 F. Supp. 647). "Statements of counsel in brief or in argument are not sufficient for motion to dismiss or for summary judgment," **Trinsey v. Pagliaro**, D. C. Pa. 1964, 229 F. Supp. 647." McCalla Raymer Leibert Pierce, LLC Attorneys statements are hearsay, counsels do not have personal knowledge of the note, mortgage deed or my property 1192 E46th Street Brooklyn New York 11234 and foreclosure case: 507782/2015.



Carlyne Desir files this Opposition, Objection and Strike to NOTICE OF MOTION TO DISMISS THE COMPLAINT;, NOTICE TO PRO SE LITIGANT;, MEMORANDUM OF LAW;, DECLARATION OF MICHAEL E. AUERBACH, ESQ.; AND CERIFACTE OF SERVICE and states follow: All Answers correspond to the numbered paragraphs for the NOTICE OF MOTION TO DISMISS THE COMPLAINT;, NOTICE TO PRO SE LITIGANT;, MEMORANDUM OF LAW;, DECLARATION OF MICHAEL E. AUERBACH, ESQ.; AND CERIFACTE OF SERVICE. All allegations of McCalla Raymer Leibert Pierce, LLC, attorneys statements and claims are denied unless expressly admitted herein.

I Carlyne Desir have personal firsthand knowledge of the facts and competent to testify to the true of the following facts if call in witness. Carlyne Desir does hereby solemnly swear, declare, and state the facts on the record:

1. Claims in **NOTICE OF MOTION TO DISMISS PURSUANT TO FED.R.CIV.P.41(b), 12(b)(1), AND 12(b)(6)**. Carlyne Desir object, strike and denies ALL allegations. Inadmissible hearsay. Supreme Court Rulings “**An attorney for the plaintiff cannot admit evidence into the court. He is either an attorney or a witness**”. (Trinsey v. Pagliaro D.C.Pa. 1964, 229 F. Supp. 647). “Statements of counsel in brief or in argument are not sufficient for motion to dismiss or for summary judgment,” Trinsey v. Pagliaro, D. C. Pa. 1964, 229 F. Supp. 647.” I have NOT seen any evidence to support any allegations to the contrary, and I believe no such evidence exists.
2. Claims in **NOTICE TO PRO SE LITIGANT PURSUANT TO LOCAL CIVIL RULE 12.1**. Carlyne Desir object, strike and denies ALL allegations. Inadmissible hearsay. I have NOT seen any evidence to support any allegations to the contrary, and I believe no such evidence exists.
3. Claims in **MEMORANDUM OF LAW**. Carlyne Desir object, strike and denies ALL allegations. Inadmissible hearsay. McCalla Raymer Leibert Pierce, LLC IS NOT a competent witness with first hand personal knowledge. JP MORGAN CHASE BANK, N.A, accuser Defendant need to testify to the facts. “competent fact witness” (ie: someone with first hand knowledge who can take the stand under oath). Mach-Tronics, Inc. v. Zirpoli, 316 F.2d 820 (9 Cir. 1963). . I have NOT seen any evidence to support any allegations to the contrary, and I believe no such evidence exists.
4. Claims in **DECLARATION OF MICHAEL E. AUERBACH, ESQ. IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE COMPLAINT PURSUANT TO FED.R. CIV.P. 41(b), 12 (b)(1) AND 12(b)(6)**. Carlyne Desir object, strike and denies ALL allegations. Inadmissible hearsay. McCalla Raymer Leibert Pierce, LLC IS NOT a competent witness with first hand personal knowledge. JP MORGAN CHASE BANK, N.A, accuser Defendant need to testify to the facts. “competent fact witness” (ie: someone with first hand knowledge who can take the stand under oath). Mach-Tronics, Inc. v. Zirpoli, 316 F.2d 820 (9 Cir. 1963).

5. Claims in **ORDER**. Carlyne Desir object, strike and denies ALL allegations. Inadmissible hearsay. I have NOT seen any evidence to support any allegations to the contrary, and I believe no such evidence exists.

6. Based upon information received by an expert mortgage audit report and my research, JP MORGAN CHASE BANK, N.A failed to give consideration for the loan, consideration must exist and be tender to support the note. No consideration was given by JP MORGAN CHASE BANK, N.A for the loan amount of \$83,000, 00, violations of Truth in Lending Act and Real Estate Settlement Procedures Act (RESPA). CPA audit is Fraud and GAAP Violations. JP MORGAN CHASE BANK, N.A committed FRAUD and Unjust enrichment. No evidence to show alleged borrower Carlyne Desir was ever giving any money or borrowed money base on the loan agreement. JP MORGAN CHASE BANK, N.A knew the property was PAID IN FULL at closing and JP MORGAN CHASE BANK, N.A did not fund the alleged loan. My signature monetized the original promissory note. Contract agreement was breached by JP MORGAN CHASE BANK, N.A.

7. CHASE used Fraud as trickery, deceit, intentional misrepresentation, concealment, or nondisclosure for the purpose of inducing Plaintiff to part with something of value. The agreement was not for Carlyne Desir Plaintiff to fund the loan or give cash value to the alleged loan. JP MORGAN CHASE BANK, N.A deposited my asset in one account and a liability in another account. General Accepted Accounting Principles (GAAP) and Federal Reserve Publication two loans were exchange. Carlyne Desir did not agree to swap or exchange. The IOU was an exchanged for IOU, the two IOU cancel out each other. Should the one who funded the loan be repaid the money per GAAP? The party who funded the loan Per GAAP is to be repaid the money. Carlyne Desir funded the loan, which the bank still has not repaid me for!? **Affidavit of expert witness Walker F. Todd. STATE OF MICHIGAN. IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND. ) BANK ONE, N.A., Case No. 03-047448-CZ. ) Plaintiff, ) Hon. E.. Sosnick.** Furthermore, Truth in Lending Act (TILA) requires full disclosures by law, loan was securitized and insure with default mortgage insurance. Every contract must be enter into knowingly, voluntarily, and intentionally by both parties and it is void and enforceable. I'm the creditor because I put up the security for the alleged loan.

8. Defendant was involved and caused plaintiff Carlyne Desir harm and violated plaintiff's rights by the following facts.

**Bad faith** (intent to deceive) and **FRAUD** (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party. False suit, false act. Defendant collected debt/loan, money (monthly payments) from Plaintiff on the basis of fraud.

Defendant Chase specific allegations of wrongdoing:

1. Misrepresentation of a material fact (credit not loan, **TILA Exhibit A**)
2. Knowledge on the part of the accused that they were misrepresenting the fact

3. The misrepresentation was made purposefully, with the intent of fooling the victim plaintiff Carlyne Desir
4. The victim Plaintiff Carlyne Desir believed the misrepresentation and relied upon it
5. The victim Plaintiff suffered damages as a result of the misrepresentation
6. Concealed material facts from plaintiff Carlyne Desir
7. Failure of consideration to plaintiff, NO LOAN for \$83,000, 00. Plaintiff signature monetize the original promissory note.
8. JP MORGAN CHASE BANK, N. collected monthly payments from plaintiff for a loan Chase did not give and reported on plaintiff credit report they give a loan which was false (**credit report Exhibit B**).
9. Plaintiff Truth in Lending Act (TILA) disclosure shows credit, no loan
10. Chase advertises on their website for “home loan” not credit. My understanding was that I was getting a loan (**advertisement Exhibit C**).
11. **FRAUD**
12. An Unrebutted Affidavit stands as Truth

Courts have defined fraud as trickery, deceit, intentional misrepresentation, concealment, or nondisclosure for the purpose of inducing another to part with something of value. It also includes false representation of a matter of fact by words or conduct or by the concealment of what should have been disclosed that deceives or is intended to deceive another so he shall act upon it to his legal injury. *See In re E.P.*, 185 S.W.3d 908 (Tex. App. Austin 2006).

Carlyne Desir gave cash value to the alleged loan, fraudulent contract, breach of contract and fiduciary duties, failure of consideration and my signature monetize the original promissory note. Credit by booking entry, General Accepted Accounting Principles (GAAP) and Federal Reserve Publication two loans were exchange, Carlyne Desir did not agree to swap or exchange, the IOU was an exchanged for IOU, the two IOU cancel out each other, Unjust enrichment, securitization, Mortgage default insurance to secure the lender against non-payment of loan. CPA audit is Fraud and GAAP Violation, Truth In Lending Act, Real Estate Settlement Procedures Act (RESPA) Fair credit reporting Act (FCRA) and Fair Debt Collection Practices Act (FDCPA) and UCC violations, Contract void and enforceable. **FRAUD:** Fraudulent concealment, unjust enrichment, fraudulent conversion, misrepresentation of a material fact, false pretense, theft, fraud in the inducement, fraud by concealment, actual or constructive fraud, fraud in the execution, mail fraud, perjury, false statements, false representation, promissory fraud, illegal consideration, extortion, RICO, frivolous, fiduciary (bank fiduciary responsibility in the borrower's transaction account), counterfeit, forgery, signature, bona fide, failure of consideration, white collar crime, unfair trade practices, larceny, larceny by deception, trick, legal fraud, good faith, bad faith, monopoly, moneychanger, loan, exchange, legal, and lawful. I have NOT seen any evidence to support any allegations to the contrary, and I believe no such evidence exists.

**Plaintiff is entitled to the damages and other relief sought by the court. Damages are continuing at the present time in connection with alleged loan and my property 1192 E46th Street Brooklyn NY 11234.**

Plaintiff Carlyne Desir seeks damages and accounting to resolve the rights and responsibilities under the facts. By defendant actions, defendants intentionally inflicted emotional distress on plaintiff. Defendant has intentionally cause me emotional distress, caused plaintiff suffering, mental and emotional distress. As a result of Conduct, Carlyne Desir has been injured. This damages my reputation intentionally, recklessly and with malice, spite and ill will. Border Collie Rescue, Inc. v. Ryan , 418 F. Supp. 2d 1330 ( 2006 ).

Damages are continuing at the present time: fraud as trickery, deceit, intentional misrepresentation, concealment, or nondisclosure for the purpose of inducing another to part with something of value continuing at the present time with prosecution of an unlawful foreclosure action. It also includes false representation of a matter of fact by words or conduct or by the concealment of what should have been disclosed that deceives or is intended to deceive another so he shall act upon it to his legal injury. Defendants Breach of contract and fiduciary duties. This financial and emotional distress has caused me insomnia, depression and anxiety. By defendant actions, defendant intentionally inflicted emotional distress on plaintiff. All defendant has intentionally cause me financial distress, caused plaintiff suffering, mental and emotional distress.

WHEREFORE, Chase MORTGAGE WAS PAID IN FULL at closing. The party who funded the loan Per GAAP is to be repaid the money. Carlyne Desir funded the loan, which the Chase still has not repaid Plaintiff for. Carlyne Desir gave cash value to the alleged loan. Fraudulent contract, breach of contract and fiduciary duties, failure of consideration and my signature monetize the original promissory note. Credit by booking entry, General Accepted Accounting Principles (GAAP) and Federal Reserve Publication two loans were exchange, Carlyne Desir did not agree to swap or exchange, the IOU was an exchanged for IOU, the two IOU cancel out each other, Unjust enrichment, securitization, Mortgage default insurance to secure the lender against non-payment of loan ( TILA Exhibit attached ), CPA audit is Fraud and GAAP Violation, Truth In Lending Act, Real Estate Settlement Procedures Act (RESPA) Fair credit reporting Act (FCRA) and Fair Debt Collection Practices Act (FDCPA) and UCC violations. Contract void and enforceable. **FRAUD:** Fraudulent concealment. unjust enrichment. fraudulent conversion. misrepresentation of a material fact. false pretense. theft. fraud in the inducement. fraud by concealment. actual or constructive fraud. fraud in the execution. mail fraud. perjury. false statements. false representation. promissory fraud. illegal consideration. extortion. RICO. frivolous. fiduciary (bank fiduciary responsibility in the borrower's transaction account). counterfeit. forgery. signature. bona fide. failure of consideration. white collar crime. unfair trade practices. larceny. larceny by deception. trick. legal fraud. good faith. bad faith. monopoly. moneychanger. loan. exchange. legal. and lawful. No evidence to show alleged borrower Carlyne Desir was ever giving any money or borrowed money base on the loan agreement.

Defendant Chase has caused plaintiff suffering. mental. emotional distress and damages continuing at the present time with alleged loan connection. Carlyne Desir has been injured. This damages my reputation intentionally. recklessly and with malice. spite and ill will. Plaintiff demands judgment in the sum of \$1.000.000 plus all costs of this action

and such other relief that this court deems to be appropriate.

Plaintiff, has yet to see any lawful proof of claim that the alleged Note is a unilateral contract with no Duty or Performance signature by Defendant Chase to provide any consideration whatsoever to Plaintiff Carlyne Desir. Until such a time that defendant Chase comes forth with proof by providing original wet ink contract and agrees to provide such lawful proof under oath, alleged loan is fraud. UCC article 8 entitlement, Kickbacks under 2607 of Title 12 RESPA, California Civil code 2941 release lien. Adverse claim 8-102. Plaintiff Carlyne Desir seeks damages and for an accounting to resolve the rights and responsibilities under the facts.

**The collection of any alleged loan or debt after being PAID IN FULL by my promissory note, default mortgage insurance and loan Securitized (paid in full by investors) would be a case of unjust enrichment, and fraud on the consumer and fraud on the court foreclosure Case 507782/2015 in connection with Chase alleged loan and my property 1192 E46th Street Brooklyn NY 11234.**

ANY/All documents filed by McCalla Raymer Leibert Pierce, LLC attorneys on the records in this instant case CV 18-2630 and authenticated by attorneys for JP MORGAN CHASE BANK, N.A, are inadmissible. **It is the duty of the court to disallow statements of counsel as evidence.** Supreme Court Rulings “An attorney for the plaintiff cannot admit evidence into the court. He is either an attorney or a witness”. (Trinsey v. Pagliaro D.C.Pa. 1964, 229 F. Supp. 647). “Statements of counsel in brief or in argument are not sufficient for motion to dismiss or for summary judgment,” Trinsey v. Pagliaro, D. C. Pa. 1964, 229 F. Supp. 647.” McCalla Raymer Leibert Pierce, LLC Attorneys statements are hearsay, counsels do not have personal knowledge of the note, mortgage or my property 1192 E46th Street Brooklyn New York 11234 and foreclosure case: 507782/2015.

**Pro Per and pro se litigants should therefore always remember that the majority of the time, the motion to dismiss a case is only argued by the opposing attorney, who is not allowed to testify on the facts of the case, the motion to dismiss is never argued by the real party in interest.**

I have NOT seen any evidence to support any allegations to the contrary, and I believe no such evidence exists.

I Carlyne Desir declare under penalty of perjury that the foregoing is true and correct. The declaration is executed in Kissimmee FL July 1, 2018.

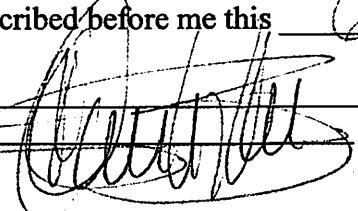
IN WITNESS WHEREOF, this OPPOSITION, OBJECTION AND STRIKE TO NOTICE OF MOTION TO DISMISS THE COMPLAINT;, NOTICE TO PRO SE LITIGANT;, MEMORANDUM OF LAW;, DECLARATION OF MICHAEL E. AUERBACH, ESQ.; AND CERIFACTE OF SERVICE AND ORDER and SUPPORTING AFFIDAVIT is executed under seal on the 5 day of July 2018.



Carlyne Desir

without prejudice UCC 1-308/1-207 reserving all my rights

Subscribed before me this 6 day of July, 2018:

By  , Notary Public presented:  
My Commission Expires

Executed in the presence of: \_\_\_\_\_ (Seal)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Carlyne Desir

Plaintiff(s)

MAGISTRATE JUDGE JAMES ORENSTEIN  
vs. CV 18-2630

Florida Capital Bank, N.A., THE BANK OF NEW YORK Mellon FKA The Bank New York, (CWALT 2006-31CB), Bank of America, Bayview Loan Servicing, LLC, Frenkel Lambert Weiss Weisman & Gordon, LLP, STEWART TITLE, JP MORGAN CHASE BANK, N.A, and Mortgage Electronic Registration Systems, Inc. (MERS)

Defendant(s)

**AFFIDAVIT OF JP MORGAN CHASE BANK, N.A,**

The undersigned affiant, being duly sworn on oath, deposes and says:

That he/she is an officer of JP MORGAN CHASE BANK, N.A, that hold the promissory note of Carlyne Desir in the original, principal amount of \$83.000.

That he/she, as an officer of JP MORGAN CHASE BANK, N.A, holding said note, has the authority to execute this affidavit on behalf of JP MORGAN CHASE BANK, N.A, and to bind the same to its provisions.

The loan agreement has the following terms:

JP MORGAN CHASE BANK, N.A, follows GAA P (Generally Accepted Accounting Principles). The intent of the loan agreement is that the party who funded the loan, per bookkeeping entries, is to be repaid the money loaned. According to the bookkeeping entries, JP MORGAN CHASE BANK, N.A, used their money as adequate consideration to purchase the promissory note of Carlyne Desir. The promissory note was not used as value to give value to a check or similar instrument or checking account. I affirm that I understand the terms and conditions of the loan agreement.

Signed under penalty of perjury

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Signature of Officer

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Officer Print Name

Sworn to and subscribed before me this \_\_\_\_\_ My commission Expires

# **EXHIBIT A**



**CLOSED-END NOTE  
(FIXED RATE)**

JPMorgan Chase Bank, N.A.  
C/O Chase Home Finance LLC  
250 West Huron Road  
Cleveland OH, 44113-1406

Date: June 22, 2006  
Account No.: 0917946080  
Ref. No.: 061524401030

**PAID IN FULL**

1192 EAST 46 STREET, BROOKLYN, NY 11234-1406

(Property Address)

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 83,000.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is JPMorgan Chase Bank, N.A.. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder".

**Truth in Lending Disclosure Statement**

ANNUAL PERCENTAGE RATE <small>The cost of credit as a yearly rate.</small>	FINANCE CHARGE <small>The dollar amount the credit will cost me.</small>	Amount Financed <small>The amount of credit provided to me or on my behalf.</small>	Total of Payments <small>The amount I will have paid after I have made all scheduled payments.</small>
8.510 %	\$ 96,447.13	\$ 82,600.50	\$ 179,047.63

**Variable Rate:** This transaction does not contain a Variable Rate feature.

Payment Schedule:		
No. of Payments	Amount of Payments	When Payments are Due - Monthly Beginning on
179	635.26	July 23, 2006
1	65,336.09	June 23, 2021

**Late Charge:** If a payment is more than 15 days late, I will pay a late charge in an amount equal to 5.00 % of the total regularly scheduled payment.

**Security:** This loan is secured by my property located at:  
1192 EAST 46 STREET, BROOKLYN, NY 11234-1406

**Property Insurance:** You may obtain hazard and flood insurance from any company you choose that is acceptable to the lender.

**Prepayment:** If I pay off early, I will not have to pay a penalty. I will not be entitled to a refund of part of the finance charges if I prepay.

**Assumption:** Someone buying my home will not be allowed to assume the remainder of the mortgage and note at the original terms.

See contract documents and the remainder of this document, for any additional information about non-payment, default, the right to require repayment in full before the scheduled date, and prepayment refunds and penalties.

**2. INTEREST**

Interest will be charged on the unpaid principal until the full amount of principal has been paid. Interest will be computed and charged from one scheduled payment due date to the next.

# **EXHIBIT B**



# EXHIBIT C



## Get the right home loan for your needs

[Get prequalified—Start online >](#)

### Take advantage of today's mortgage rates.

You could prequalify for one of our many [loan types](#), and you can feel confident in your home financing decisions with step-by-step guidance from an experienced Home Lending Advisor.

**Take the first step and get prequalified.  
Find out how much home you can afford.**

[Start online](#)

Some of our products and features might be different depending on your location.

With your ZIP code, we can make sure the information you see is accurate.

ZIP code

Next

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Purchase rates

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≡<%= timestampvalue %>



[Get a rate & payment estimate](#)

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**Loan type Rate APR**

30-yr fixed XXX% XXX%

15-yr fixed XXX% XXX%

7/1 ARM XXX% XXX%

5/1 ARM XXX% XXX%

Rates shown not available in all states. Rates are representative and rounded to nearest point. Actual rates may vary.

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Take the first step and get prequalified.

**Call a Chase Home Lending Advisor**

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**Click**

Start online

**Come in**

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## Want to know your mortgage payment?

Get an interest rate and payment estimate with this simple calculator. [Compare types](#) [of loans](#) that may work best for you.

Loan purpose

Choose one

CHASE 

\* Loan amount 

\$

State

Choose one

Reset

Calculate

Results of the mortgage affordability estimate/prequalification are guidelines; the estimate is not an application for credit and results do not guarantee loan approval or denial.

Tools and calculators are provided as a courtesy to help you estimate your mortgage needs. Results shown are estimates only. Speak with a Chase Home Lending Advisor for more specific information. Message and data rates may apply from your service provider.

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